

## Adopt Positions on Legislation Affecting Council Interests

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**Summary:** This report includes a description of AB 1095 (Buchanan).

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### **AB 1095 (Buchanan) as amended 06/27/2012**

Location: Senate Natural Resources and Water Committee

Hearing Date: July 3, 2012 (Upon adjournment of Energy, Utilities and Communications Committee)

### **DESCRIPTION**

Current law, the Sacramento-San Joaquin Delta Reform Act of 2009 (Act), defines “covered action” as a plan, program, or project that may cause a direct or indirect change in the physical environment and that meets all of the following conditions:

- Will occur in whole or in part within the boundaries of the Delta or Suisun Marsh.
- Will be carried out, approved, or funded by the state or a local agency.
- Is covered by one or more provisions of the Delta Plan (Plan).
- Will significantly impact the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs.

The Act specifies seven conditions and situations that are not deemed to be covered actions. These include state regulatory actions, routine maintenance of the state and federal water projects, and routine maintenance and operation of any facility located in the Delta that is owned or operated by a local agency, among others.

The Act also requires public agencies to prepare a written certification of consistency containing findings that a covered action is, or is not, consistent with the Plan.

This bill would add the following as not being covered actions:

- Any CEQA project that, as of September 30, 2009, met all of the following conditions:
  - The project is in an urban or urbanizing area.
  - The project is in the Delta Secondary Zone.

- The project is within an adopted sphere of influence or urban limit line and conforms to an adopted general plan.
- Any upgrades to existing drinking water, storm water, or wastewater treatment facilities to meet state water quality standards.
- Any levee improvements and flood control projects in the Delta secondary zone consistent with state and/or federal standards and that comply with CEQA or the National Environmental Policy Act.

This bill would additionally declare that any substantive expansion or amendment of existing boundaries of the sphere of influence or general plan of an urban or urbanizing area into the Delta shall not be exempt from the definition of covered action.

**Comment:** Proper limits on covered actions already exist:

- Statutory criteria defining a covered action include several conditions, all of which must be met in order to determine that a plan, project, or program is a covered action. These conditions include the demonstration of significant impact on the coequal goals and coverage by one or more provisions of the Plan.
- Statutory exemptions include: projects completed before the Plan becomes effective, routine maintenance of local facilities, and regional transportation projects.
- Administrative exemptions are included in the Plan; i.e. certain projects that are exempt under CEQA, water transfers, and specified port activities.

There are several objectionable policy provisions in this bill:

- Placing into statute the exemptions proposed in this bill would require any future changes to the Plan to be done via legislation. This is hardly what the authors of the Act had in mind when it was drafted.
- Exempting water facility upgrades entirely means that, regardless of the scope and scale of any upgrade, an assessment as to whether the project is or is not consistent with the coequal goals, will not be done.
- The proposed statutory language for categorical exemptions lacks the qualifier “except in unusual circumstances” that is included in the Plan and thus would exempt from consistency review local government plan amendments made to conform to the land use and resource management plan adopted by the Delta Protection Commission and small scale habitat restoration projects that are inconsistent with the Plan.

- The exemption of any levee improvement in the secondary zone would prevent the Council from coordinating flood control projects with water management and ecosystem restorations.

Because the Council will not complete and adopt the Plan until late 2012, and because the regulatory portions of the Plan will not take effect until the state rulemaking process is completed (early 2013), the consistency determination process will not begin until then. This bill is, therefore, premature.

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